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Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations

Report of the Office of Internal Oversight Services on the investigation conducted by the Investigations Task Force into fraud and corruption allegations at Pristina Airport*

Summary

In 2002 the Investigations Division of the Office of Internal Oversight Services (OIOS) and the European Commission's European Anti-fraud Office (OLAF) conducted an investigation into the fraudulent activities of a senior staff member of the Kosovo Energy Company, KEK, which led to his criminal conviction and the successful return of $4.3 million. As a consequence of that investigation, a series of financial and forensic audits of KEK and four other publicly owned enterprises in Kosovo and in Serbia and Montenegro were conducted. As a result of those audits, in which fraudulent activities were identified, a decision was taken in mid-2003 to establish a joint investigations task force with a focus on serious misconduct and criminal conduct in those public enterprises.

OIOS, OLAF, the Office of the Special Representative of the Secretary-General for the United Nations Interim Administration Mission in Kosovo (UNMIK) and the UNMIK Financial Investigations Unit agreed to establish an Investigations Task Force to identify fraud and corruption in UNMIK as well as in all the publicly owned enterprises in Kosovo and those institutions funded from the Kosovo consolidated budget. To ensure efficiency of the operation in Kosovo, an UNMIK

* The delay in submission was necessitated by intensive consultations with the United Nations Interim Administration Mission in Kosovo and the time required to evaluate and incorporate the comments received on the report's findings and recommendations.

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executive decision, dated 21 October 2003 identified the parameters of the Task Force and its responsibilities, but each component of the Task Force retained its respective authority and mandate.

The first responsibility of the Task Force was to conduct a full investigation into activities at Pristina Airport, which commenced in November 2003. Based on the audit reports on the airport, the Task Force anticipated that a detailed investigation into airport activities could be completed in approximately six months and possible systemic traits identified that could assist investigations of other publicly owned enterprises. However, the airport investigation required more time than expected. In all, the Task Force submitted 33 reports to the Special Representative of the Secretary-General: the first in August 2004 and the last in June 2005. In 17 cases, the Task Force addressed institutional shortcomings and provided recommendations for management review. Fifteen cases involved administrative shortcomings and flaws, primarily in the areas of procurement. Nine cases were referred through the Special Representative of the Secretary-General to the UNMIK Department of Justice for further criminal investigation. As some reports addressed more than one category or issue (administrative, institutional, criminal referral), the number of cases described here exceeds the overall total of 33.

The findings of the investigations and the resultant actions by UNMIK show a lack of accountability in the operation, management and supervision of the airport.

Since the issuance of the reports there has been an exchange of correspondence between OIOS/OLAF and the Special Representative of the Secretary-General on the lack of support for the work of the Task Force. In a letter dated 25 July 2005 addressed to the Task Force, OIOS and OLAF, the Special Representative conveyed the message that — in most instances — no administrative action against airport managers would be taken, citing reasons such as that "staff in peacekeeping missions, including UNMIK, are transient" and the events reported were "historical". The Special Representative reiterated this position in another memorandum to OIOS dated 28 October 2005. OIOS addressed this lack of accountability in two letters to the Special Representative, dated 22 September and 28 November 2005. On 9 November, the Director-General of OLAF responded to the Special Representative's 28 October 2005 memorandum and reiterated the position of OIOS.

OIOS is hereby reporting to the General Assembly on its activities with respect to the misconduct and mismanagement identified at Pristina Airport for its review and consideration. The present report was provided to OLAF for its comments. The Director-General of OLAF indicated his agreement and support for the content of the report. The comments of the Special Representative and the Department of Peacekeeping Operations are shown in italics throughout the report.

The Special Representative of the Secretary-General, in his response to the final draft of the report, stated that it was outside OIOS jurisdiction to report to the General Assembly on the results of Task Force investigations, citing a legal opinion of the Office of Legal Affairs dated 6 December 2005. The Special Representative responded: "I must take strong exception to the manner in which OIOS is purporting to adopt [Task Force] reporting as its own, reveal the substance of [Task Force] reports publicly, question and monitor decisions on [Task Force] recommendations that are mine alone to take". The Special Representative has refused to address the OIOS recommendations since they flow from "incorrect and unfounded assertions of

a prerogative to direct [him] with regard to [Task Force] reporting, and of a mandate to investigate entities such as the [publicly owned enterprises] in Kosovo". The Department of Peacekeeping Operations, in response to the final draft of this report, supported the Special Representative's comments.

OIOS has an obligation to report to the General Assembly on matters "that provide insight into the effective utilization and management of resources and the protection of assets", in accordance with resolution 48/218 B. With particular reference to UNMIK and the publicly owned enterprises, OIOS has reported to the Assembly in the past in the reports on its activities (A/57/451, A/59/359 and A/60/346) and in a separate report on investigation into the fraud in KEK (A/58/592 and Corr.1). OLAF, for its part, also submitted a comprehensive report on the Task Force investigations to the European Union in May 2005.

It is the view of OIOS, shared by OLAF, that it is the responsibility of UNMIK to combat corruption vigorously, including addressing all issues raised by the Task Force, to ensure that the future of Kosovo is based on sound management and international standards in the area of anti-corruption prevention and investigation to further reduce long-term problems. OIOS is concerned that the Special Representative's failure to address an exceptionally large number of the recommendations of the Task Force and, notably, his reluctance to consider any of the OIOS recommendations, will allow the ongoing problem of corruption to prevail. In a recent report of the Secretary-General to the Security Council on UNMIK, the Special Representative himself establishes that "no significant progress was made on tackling corruption" (S/2006/45, para. 39). Nevertheless, certain senior staff members of publicly owned enterprises were, and still are, in the same positions as they were when the investigation was undertaken and the reports were issued to the Special Representative.

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I. Introduction

1. In 2002 the United Nations Office of Internal Oversight Services (OIOS) and the European Anti-fraud Office (OLAF) cooperated in the investigation of fraud-related activities of Jo Hans Dieter Trutschler, who was the internationally recruited co-head of the Administrative Department of Public Utilities of the United Nations Interim Administration Mission in Kosovo (UNMIK). At the same time he served as Chairman of the Supervisory Board of the Kosovo Energy Company (KEK). Mr. Trutschler used his positions to fraudulently obtain in excess of $4.3 million to the financial disadvantage of UNMIK. The case was referred to the authorities in Germany, where he was subsequently convicted and sentenced to a prison term. The investigation enabled UNMIK to recover the full amount of the financial loss.

2. The investigation indicated that KEK and other publicly owned enterprises in Kosovo were at high risk for fraud and other financial irregularities. Therefore, OLAF and OIOS requested that Pillar IV of UNMIK, which is responsible for public institutions and infrastructure reconstruction and is a key component of the requirements of Security Council resolution 1244 (1999), undertake comprehensive audits of the major publicly owned enterprises, namely, Pristina Airport, KEK, UNMIK Railways, the post and telecommunications provider (PTK) and the water, waste and irrigation sector. Subsequent audits by the firms KPMG, Deloitte & Touche, and De Chazal Du Mée (DCDM) indicated a high probability of fraud and significant management and systems of control problems in all areas.

3. The audit of Pristina Airport by DCDM, covering the period from January 2001 to early 2003, identified significant opportunities for fraud and determined that mismanagement, particularly in the areas of procurement, the collection of handling and landing fees and the allocation of aircraft landing and takeoff slots, was rife. Moreover, additional information came to light after the completion of the DCDM audit of Pristina Airport regarding allegations of what appeared to be systematic corruption in the management of the airport, such as the handling and storage of cargo and bribery in connection with employment.

4. In July 2003 representatives of OLAF, OIOS, the UNMIK Office of the Special Representative of the Secretary-General, the European Agency for Reconstruction and the UNMIK Financial Investigation Unit agreed to establish an Investigation Task Force to examine the areas of concern identified by the audits as well as allegations of criminality in the publicly owned enterprises.

5. On 21 October 2003, the then Special Representative of the Secretary-General, Harri Holkeri, issued executive decision 2003/16 establishing the Investigation Task Force and identified its operational parameters.[1] The Task Force, which is composed of OIOS, OLAF and the Financial Investigation Unit, began its operations in Kosovo in November 2003.

6. Under the executive decision, each of the three investigative bodies operates within the Task Force but retains its own mandate: OLAF and OIOS conduct administrative investigations and, by virtue of its mandate, the Financial Investigation Unit provides the necessary executive police powers. Also in late 2003, the Office for Coordination of Oversight of Publicly Owned Enterprises was

[1] See http://www.unmikonline.org/regulations/unmikgazette/02english/e2003eds/EDE2003_16.pdf.

created by UNMIK to assist in the management reform of the publicly owned enterprises. The Office was mandated to coordinate UNMIK oversight of publicly owned enterprises in close cooperation with the Kosovo Trust Agency and Pillars I and IV (see below). The head of the Office reported directly to the Special Representative of the Secretary-General and was to ensure that the reform of the publicly owned enterprises, especially in line with the issues identified by the audits and the investigations, would be addressed by the relevant UNMIK pillars, especially Pillar IV.

II. Background information

A. Structure of the United Nations Interim Administration Mission in Kosovo

7. The mandate of UNMIK (see Security Council resolution 1244 (1999) and UNMIK regulation 1999/1), with the assistance of other international organizations, is to establish an international civil presence and provide an interim administration for Kosovo. This is carried out under four "pillars", two financed by the United Nations and two financed by other international organizations, but all falling under United Nations leadership. The pillars are: I, police and justice — financed by the United Nations; II, civil administration — financed by the United Nations; III, democratization and institution-building — financed by the Organization for Security and Cooperation in Europe; and IV, reconstruction and economic development — financed by the European Union. To affirm the legal responsibility of UNMIK, reference should be made to the first report of the Secretary-General to the Security Council on UNMIK (S/1999/672), in which he enumerated the main responsibilities of the interim administration, elaborated on the structure of the Mission, explained that all activities of the international community in Kosovo would be carried out in an integrated manner with a clear chain of command, and stated that the Special Representative of the Secretary-General would have overall authority to manage the Mission and coordinate the activities of all United Nations agencies and other international organizations operating as part of UNMIK.

B. Audit deficiencies

8. OIOS, in its report on audit needs assessment for non-United Nations funds in UNMIK (AP/2001/83/2), observed inadequate internal audit arrangements in UNMIK, limited audit coverage of autonomous institutions such as Pristina Airport, KEK and entities providing banking and post and telecommunications services, and a need for better coordination among the existing internal audit units. The same report referred to a European Union proposal to appoint an international staff member to fill the post of Auditor-General with the aim of creating a core team of Kosovar auditors by the end of 2004. The Office of the Auditor-General was established in 2002 (UNMIK regulation 2002/18), and an international Auditor-General was recruited by the end of 2003. At present the Office of the Auditor-General is not able to fully discharge all its responsibilities owing to a lack of professional auditors. OIOS stresses that regular external audits of the publicly owned enterprises should be conducted.

C. Responsibility of the United Nations Interim Administration Mission in Kosovo for Pristina Airport

9. The assets of Pristina Airport, a State-owned enterprise, include runways, terminal and other buildings, fuel storage facilities and equipment. For the duration of the investigation, those assets were maintained by the Public Enterprise Airport Pristina in cooperation with military units of the Kosovo Force.

10. Until the end of June 2002, responsibility for the administration of Pristina Airport was entrusted to UNMIK Pillar II. On 1 July 2002, responsibility for the administration of the airport passed to the Kosovo Trust Agency and Pillar IV. On 1 April 2004, Pristina Airport passed from military to civilian jurisdiction and became subject to International Civil Aviation Organization regulations.

D. Background to investigation of Pristina Airport

11. Because OIOS and OLAF had completed an investigation of KEK, it was decided that another segment of UNMIK Pillar IV should be examined. Pristina Airport was selected as the first project, and it was initially believed that such an inquiry would go quickly owing to the relative newness and size of the airport and the report of DCDM that no documents were available at the airport. In November 2003 the Task Force visited the administrative offices at Pristina Airport. Surprisingly, the Task Force found and removed hundreds of files pertaining to expenditures and procurement activities. This material was translated and analysed and led to the initiation of multiple investigations. At each stage of those investigations, an average of eight investigators were assigned to the Task Force. Thirty-three reports were issued to the Special Representative of the Secretary-General. The field component of the airport investigation was completed when the last case report was issued to the Special Representative, on 29 June 2005.

12. On a quarterly basis during the airport investigations, a head of agency meeting was convened in Kosovo by the UNMIK Principal Deputy Special Representative of the Secretary-General to discuss Task Force developments and the latest information on fraud and corruption in Kosovo. These meetings were attended by the Special Representative or his designee, usually his Principal Deputy, the head of each pillar, the head of the Financial Investigation Unit, the respective heads of OLAF and OIOS or their designees, the UNMIK legal adviser and the Director of the Criminal Division of Pillar I. The last of these meetings was held in March 2005, with another one scheduled for July 2005 that did not take place. It would appear that since early 2005 the focus of senior UNMIK management has shifted away from anti-corruption efforts. This is clearly indicated by the lack of support for the continuation of these regular inter-agency meetings and the response of the Special Representative to Task Force reports. The absence of an anti-corruption focus is seen as a potential problem for the success of the United Nations in Kosovo in the future and is addressed below.

13. The Special Representative's statement in response to the Task Force reports, dated 25 July 2005, indicated that UNMIK did not want "historical" recommendations but only those which proposed specific management actions for the future, despite the fact that the reports, the first one dated 16 August 2004, contained numerous recommendations for both actions against airport managers for

their failures as managers — which may be "historical" but are also necessary if there is to be accountability for corruption and mismanagement — and corrective measures designed to protect against such problems in the future. This negative attitude to the Task Force recommendations is also indicated by the reluctance of senior Mission management to take corrective action against key airport personnel identified in the reports provided to UNMIK management over the course of the past year. *The Special Representative, in his response to the final draft of the present report, stated that UNMIK had introduced a comprehensive reform programme and therefore that the conclusions of OIOS had been "drawn on a stopped clock".* However, the Special Representative himself reported to the Security Council that no significant progress had been made on tackling corruption. The report made no mention of the Task Force (S/2006/45, annex I, para. 39).

III. Methodology

14. The Task Force obtained hundreds of files and records from Pristina Airport in November 2003 and additional material from UNMIK, from both Pillar II and Pillar IV. Investigators also interviewed more than 50 managers and personnel from Pristina Airport and the Kosovo Trust Agency as well as third parties. The Task Force collated and analysed the results and investigated the allegations as discrete cases, conducting additional interviews and obtaining further documents and records as necessary. Moreover, the Task Force provided investigative assistance to the Financial Investigation Unit in a number of cases. The Task Force issued its reports to the Special Representative setting out the investigation findings and, in certain cases, where a prima facie criminal case was identified, sought his approval to refer those cases to the UNMIK Department of Justice. In the majority of cases investigated, the Task Force recommended administrative or disciplinary action by UNMIK. *The Special Representative has rejected most of the disciplinary recommendations citing excuses of difficult circumstances in a peacekeeping environment and refusing to acknowledge corruption as a widespread phenomenon at Pristina Airport. The Special Representative was satisfied with 21 out of 74 recommendations having been implemented. He added that, with regard to Task Force recommendations on which he had decided that no further action would have to be taken, they involved for the most part individuals who were outside his mandate (former UNMIK employees and employees of publicly owned enterprises).*

15. OIOS recalls that the Special Representative has overall responsibility for all activities performed under the umbrella of UNMIK in Kosovo (see S/1999/672, para. 3). OIOS further clarifies that, in accordance with its mandate as set out in UNMIK executive decision 2003/16, the Task Force also investigated non-UNMIK staff members with responsibilities at the airport.

IV. Investigative activities

16. During the research phase of the investigation, the Task Force established that no external audit reports regarding finance, operations and management had been presented while the airport was being managed and administered by Pillar II, prior to 1 July 2002. Furthermore, the Task Force found no evidence of any external control of airport funds prior to that date. Following a series of discussions between

the head of Pillar IV and the OIOS and OLAF managers, external audits were commissioned by Pillar IV after its assumption of responsibility for the airport. They focused on the period from January 2001 to early 2003 and revealed a substantial lack of managerial, administrative and financial accountability on the part of the Kosovo Trust Agency and airport management, which both fall under the management responsibility of Pillar IV and, ultimately, the Special Representative.

17. The February 2003 audit report submitted by DCDM demonstrated that requests for tenders and purchases were not centralized in the procurement department, nor was there any evidence of legal vetting and independent approval of the procurement activity requested. In another instance, DCDM established that processes and information flows in airport management were inefficient and ineffective and that there was a risk of undetected fraud and errors owing to shortcomings in business processes, revenue collection and information technology applications.

18. Furthermore, DCDM audits suggested a high risk of fraud and corruption in airport operations and management. In one instance the report identified a lack of confidentiality and transparency in the airport procurement process. It stated that commissions and kickbacks were paid and salient information was passed on to favoured bidders, which was confirmed by the Task Force in case 214/04, which was referred to the Department of Justice, where it is still under judicial review.

19. Following the DCDM audit reports, the Task Force investigated allegations of disregard for procurement rules and tendering procedures, possible misappropriation of funds and fraud to the detriment of Pristina Airport and UNMIK, as well as allegations received during the course of those inquiries. The Task Force identified the need for a complete overhaul of the airport's administrative activities, including the institution of administrative and disciplinary procedures for staff, institutional managerial improvements and areas requiring further criminal investigation.

20. The Task Force opened 35 separate cases related to Pristina Airport. From August 2004 to June 2005, it issued 33 reports to the Special Representative. Of the remaining two cases, one was not within the jurisdiction of the Task Force, as it was a European Union matter. The other pertained to potential lost revenue at the Pristina Airport cafeteria, which was identified and rectified on the spot when investigators provided informal advice to airport management. Five of the cases were closed by the Task Force for lack of evidence. In 17 cases, the Task Force addressed institutional shortcomings and gave managerial advice. Fifteen cases involved administrative irregularities, primarily in the areas of contracts and procurement. Nine cases were referred through the Special Representative to the Department of Justice for criminal investigation. As some case reports addressed more than one category or issue (administrative, institutional, criminal referral), the number totals more than 33.

21. A brief summary of the most significant cases is provided below and a list of all matters investigated is provided in the annex. Investigation reports on individual cases were issued between August 2004 and June 2005, when the Special Representative of the Secretary-General had direct responsibility for the airport.

A. Criminal referrals

Alleged fraud relating to the construction of an apartment building owned by Pristina Airport and its employees (case 214/04)

22. The Task Force received information that numerous irregularities had occurred in the construction and subsequent utilization of an apartment complex intended for residential use by Pristina Airport employees. The investigation uncovered evidence that the Divisional Manager of Airport Services and Terminal Operations and the Chief of Maintenance Services had committed several fraudulent acts and significantly abused tendering processes in connection with the construction of the DM 1.2 billion building. In fact, the evidence suggested that the Divisional Manager had collaborated with one bidder and manipulated the bidding process in favour of the latter. Furthermore, the Task Force found evidence supporting the allegation that two airport unit chiefs, including the Chief of Maintenance Services, had unlawfully generated personal profit by subletting parts of the ground floor of the complex without authorization. Moreover, according to the evidence obtained by the Task Force, all three managers had defrauded UNMIK by diverting funds allocated for construction works. In addition, the Task Force found evidence that an UNMIK employee, working in the service of the municipality of Pristina, had embezzled a municipal fee of DM 25,000 in connection with the complex. The Task Force submitted the matter to the Special Representative of the Secretary-General on 10 May 2005, recommending the referral of the case to the Department of Justice for criminal investigation and the imposition of administrative sanctions against the individuals concerned. The Special Representative approved the referral and the Department of Justice is conducting interviews and further investigating the case. No indictment has been issued yet, as the case is still in the pre-trial stage. *The Special Representative added that in those instances where OIOS had recommended administrative action he had referred the cases to the Board of Directors of Pristina Airport.* OIOS reiterates that the Special Representative has overall responsibility for all activities performed under the umbrella of UNMIK in Kosovo.

Alleged theft and misappropriation of funds in the handling of cargo at Pristina Airport (case 192/04)

23. The Task Force received information that a Cargo Department team leader at Pristina Airport had presented a customer with a false statement of account for storage fees of €8,000, accepted payment of the fee and then kept the amount paid. The investigation indicated the complicity of the Cargo Department Manager, who had misled the customer about cargo clearance procedures and then failed to collect the required storage fees of €32,500, which represented lost revenue to Pristina Airport. The matter was referred to the Department of Justice with the approval of the Special Representative on 15 April 2005 and, following further measures by the Financial Investigation Unit, the Cargo Department team leader was charged with criminal offences; he is currently awaiting trial.

Alleged payments for jobs (case 377/04)

24. The Task Force received information that senior officials and employees of Pristina Airport, including the General Manager, were accepting bribes in exchange for providing employment at the airport. The Task Force obtained corroborating evidence and sought and obtained the approval of the Special Representative to refer

the matter to the Department of Justice on 15 April 2005. The case is currently under review by the Department of Justice.

B. Administrative cases

Alleged irregularities in the provision of a heating, ventilation and air-conditioning system at Pristina Airport (case 219/04)

25. The DCDM audit identified irregularities in the awarding of a single-source procurement contract, valued at €681,125, for a heating, ventilation and air-conditioning system in the terminal building at Pristina Airport. The Task Force found deficiencies in the original design of the system, causing the contract price to rise by €98,430. Furthermore, the Task Force found that a lack of management supervision caused an unjustified delay, which ultimately led to the single-source contract for procurement of the system. Thus, UNMIK was deprived of the benefits of a competitive tender.

26. The Task Force submitted its findings to the Special Representative on 18 April 2005, recommending administrative action for poor management and planning against the Divisional Manager of Airport Services and Terminal Operations, the former Director of the Department of Transport and Infrastructure and two other airport employees. In addition, the Task Force recommended that the Special Representative take appropriate action against the Divisional Manager of Airport Services and Terminal Operations, who gave evasive and contradictory responses during the investigation. The Divisional Manager is also facing criminal charges (see para. 22). At present, no action has been taken against the Pristina Airport employees. *The Special Representative was of the opinion that the employer, Pristina Airport, should take action upon referral by the Special Representative.* OIOS reiterates its response regarding the Special Representative's overall responsibility (see para. 7).

Allegations of irregularities in the awarding of contracts for the construction of a car park at Pristina Airport (case 274/04)

27. The audit by DCDM identified irregularities in the awarding of a competitive tender contract valued at €801,438 for the construction of a car park, a single-source procurement contract valued at €34,501 for the provision of a lighting system for the car park and a competitive shopping contract valued at €24,864 for the provision of a canopy for car park barriers at Pristina Airport.

28. The Task Force investigation revealed that the tender procedure for the car park had been conducted improperly in that the company that eventually won the tender had failed to submit a correctly prepared bank guarantee form, even though bids from other companies had been rejected for similar deficiencies. The bid evaluation report submitted by the Evaluation Committee wrongly reflected that the winning company's bid had met all evaluation criteria. Furthermore, an airport manager breached tender procedures by accepting documents from another bidder after the deadline. The Task Force found similar problems of favouritism and corrupt practices concerning the procurement of the lighting system and the barrier canopy for the car park.

29. The Task Force submitted its findings to the Special Representative on 15 April 2005 recommending a review of the performance of the responsible managers, including the Divisional Manager of Airport Services and Terminal Operations and the former Manager of the Airport Sector of the Kosovo Trust Agency, for their failure to conduct a proper procurement exercise. This case and others investigated by the Task Force demonstrated violations of administrative procedures by the Divisional Manager and others but did not indicate evidence of criminal behaviour sufficient for referral to the Department of Justice. No action has been taken against any person identified in this investigation who violated procurement procedures. *The Special Representative responded that none of the individuals cited was an UNMIK employee. Concerning the two individuals remaining at the airport, he had provided the Task Force report to the Board of Directors of the airport, which was reconsidering the cases. In his earlier memorandum, dated 25 July 2005, the Special Representative declined accountability by stating: "No further action planned. The report implies, at worst, mismanagement on the part of [the individual] and makes no supportable allegation of corruption. No action is considered appropriate at this late stage ... The report fails to take sufficient account of the circumstances under which [the individual] was working at the time and, faced with the options he had available to him at the time, it is believed that he chose the least worst option."* OIOS again refers to paragraph 7 above and notes that violations of procurement procedures can constitute corruption without being violations of local criminal laws. Again, when the case report was issued, the airport was still under the direct authority of the Special Representative.

Allegations of false employee information provided by the Deputy Manager of Pristina Airport (case 352/04)

30. The Task Force received information that the Deputy General Manager of Pristina Airport had failed to disclose in his personal history form the required information that he had been convicted of a criminal offence in 1995 involving the trafficking of persons across borders. The investigation found that the official had knowingly provided inaccurate information to his employer by failing to declare the criminal offence. The Task Force submitted its findings to the Special Representative on 30 December 2004 recommending that appropriate action be taken. *The Special Representative refused to take any action citing the "circumstances of war ... at the time" and "that the penalty was a fine, and not imprisonment".* OIOS emphasizes that the staff member was identified as having been convicted in a serious matter in another jurisdiction and that he had failed to declare that fact — as required — in his job application.

Allegations of theft and corruption arising out of the collection of handling and landing fees and de-icing costs for passenger aircraft using Pristina Airport (case 283/04)

31. The Task Force investigated allegations that corruption had occurred in the management of handling and landing fees charged by Pristina Airport to all airlines flying into and out of the airport. Primarily, the Task Force found that the charges levied on commercial airlines for such activities had not been managed through a proper financial accounting system that allowed for bank transfers from the airlines

to airport accounts. Rather, airport management required that all such charges be paid in cash directly to airport officials.

32. The Task Force found that the cash collected for landing and handling fees was controlled solely by airport managers. Some of the funds were used to pay for day-to-day running costs of the airport rather than being kept separate and paid into airport accounts. This decision therefore removed all possibility for any financial management of the landing and handling fees.

33. The Task Force also received reports that some commercial airlines had been the subject of extortion in the payment of fees for landing slots — a critical element of any commercial air carrier's flight scheduling. Moreover, in the view of the Task Force, the practice of making last-minute scheduling changes may have been designed to frustrate the airline representatives into paying bribes to airport officials to reduce such changes.

34. The Task Force was highly dependent on the air carriers themselves to provide information as to charges levied on them in its attempt to reconcile airport records of landing and handling fees. Without independent information from the air carriers or the International Air Transport Association, the Task Force was unable to prove that they were overcharged or that attempts were made to extort money from them. The investigation report, provided to the Special Representative on 15 April 2005, recommended that UNMIK make contact with the key air carriers in an effort to obtain that information. *The Special Representative responded that, in view of the fact that much time had passed since 2001 when the events had occurred, UNMIK agreed with the airport management that it would not be a good use of limited resources to pursue this matter further when the chance of success was clearly negligible.* OIOS is of the opinion that this response ignores the possibility of the collusion or extortion continuing under other guises or past criminal acts at the airport. Furthermore, cash payments continued until 2003.

V. Findings

35. The investigators found a general disregard of and disrespect for procurement rules by persons employed at Pristina Airport and a complete failure of UNMIK to address this problem. The responsible managers gave the Task Force the excuse that they had been unable to comply with procurement rules immediately after the termination of the armed conflict in 1999. However this excuse cannot be considered valid, as rules that are in place must be respected, and the relevant UNMIK financial regulation has been in effect since 1999. Moreover, the excuse is even less convincing for procurement activities in the 2002-2003 period, when the concept of emergency operations in Kosovo had waned dramatically. Furthermore, the Task Force found at the highest levels of Pristina Airport management a readiness to handle public funds provided by the Kosovo Trust Agency as well as revenues generated by the airport without any real concern about accountability. The lack of both UNMIK oversight and a system of internal control permitted the abuse of public funds by Pristina Airport staff.

36. Consequently the airport, while turning a modest profit, is less successful financially than would be expected from one of the fastest-growing airports in Europe. The evidence suggests that airport managers, as indicated in the cases described above, did not work in the interest of the common good of Kosovo and

UNMIK. It is the assessment of the Task Force that the oversight carried out by UNMIK — via the Kosovo Trust Agency, Pillar II (pre-July 2002) and Pillar IV (post-July 2002) — of the finances, management and personnel of the airport has lacked vigour and application and has led directly to the abusive practices identified by the Task Force.

37. The Task Force was surprised to find that even after the transmittal of the individual investigation reports, substantial reluctance remained on the part of UNMIK senior management to take appropriate disciplinary action against those responsible for the lack of oversight and control of airport funds. In his response to the Task Force reports, the Special Representative stated that it was incompetence rather than corruption that prevailed in cases of mismanagement at Pristina Airport identified by the Task Force. In one case the Special Representative attempted to exonerate the former manager of the airport sector of the Kosovo Trust Agency from administrative charges by stating that the Department of Justice had not found support for criminal charges against him. Although the Department of Justice has not discussed this finding with the Task Force, it cannot be considered as a valid justification for the failure to undertake administrative action.

38. The lack of action by UNMIK senior management and its inability to address fraud and corruption within the publicly owned enterprises dates back to the establishment of the Mission. Even though it has become clear that corruption is rampant in Kosovo, as revealed by the Task Force investigations and external audits, Mission management is reluctant to take action. The reports on Pristina Airport show that key airport managers were found to be the very source of mismanagement and abuse of funds in the airport for many years. As the Task Force at present is not mandated to carry out further airport investigations, it is unclear who will address these issues in the future. After more than six years of UNMIK operations, there should be a pool of qualified personnel in Kosovo able to assume responsible positions for the management of Pristina Airport. The continuity of airport operations cannot be an excuse for retaining managers who fail to demonstrate their capacity to manage. The Pillar IV management and the Special Representative need to act swiftly and strongly in order to change the culture of corruption and mismanagement in Kosovo public sector operations.

39. The Office for Coordination of Oversight of Publicly Owned Enterprises is not mandated to investigate mismanagement, fraud and corruption at the airport, but it is mandated to monitor the progress of the privatization of publicly owned enterprises, including the airport. As its function is a complementary one, the Office cannot replace the Task Force. It was established purely to monitor the reform of the publicly owned enterprises and to ensure that the Special Representative was kept abreast of developments, both positive and negative. In the absence of a fully functioning audit office in Kosovo and an anti-corruption office with the necessary mandate, it is not clear that corruption can be detected and prevented. The decision to create the Kosovo Auditor-General's office was welcomed, but it requires significant support and several years to identify, recruit and train local Kosovars to the standards required internationally for such a function. In the interim, ad hoc audits have been completed and the Office for Coordination of Oversight of Publicly Owned Enterprises has attempted — not so successfully — to garner support from Pillar IV and the Special Representative on this topic.

VI. Conclusions

40. The inevitable conclusion is that accountability for mismanagement and abuse of funds does not exist in the operation, management and supervision of the airport. Few or no external checks and balances were in place while the airport was under UNMIK Pillar II responsibility prior to 1 July 2002. Since then, the evidence suggests an absence of management oversight and a lack of action to curb fraud and corruption in airport operations and management on the part of UNMIK and Pillar IV. *The Special Representative responded that "none of these sweeping and entirely unwarranted OIOS assertions is substantiated in the report itself, or in the underlying [Task Force] reports that OIOS purports to analyse"*. OIOS is of the opinion that the 33 case reports, with 15 cases involving administrative deficiencies, 9 cases referred to the Department of Justice for criminal referral and 17 cases addressing institutional shortcomings and providing recommendations for management review, strongly support the assessment that fraud and mismanagement were rife and that there was systematic corruption. OLAF, in its final case report to the European Commission, agreed and stated that the activities took the form of fraud and corruption, deliberate breaches of administrative regulations, mismanagement and poor project management.

41. When DCDM transmitted its report to UNMIK Pillar IV in February 2003, it offered advice on a number of issues, such as the development of an accounting procedures manual for the airport and an information technology-driven financial management package in order to reduce the risk of fraud arising from the existing programmes. There is no evidence that Pillar IV took any action based on that advice. As a matter of fact, the report of external auditors on Pristina Airport for 2004 contained a disclaimer in which the auditors concluded that they were unable to express an opinion on the financial statements of the airport. Such an opinion is usually a sign of a serious weakness in management and the system of internal control.

42. The Task Force frequently heard the argument — even from UNMIK senior managers — that the funds at issue were those of Pristina Airport, not UNMIK, thereby relieving the Mission of any responsibility. This argument displays a strong disregard for the nature of publicly owned enterprises, as well as for the function of UNMIK, in Kosovo. The Special Representative and the head of Pillar IV must re-emphasize to senior managers and others the Mission's role in the budget process. Donor funds, which continue to pour into Kosovo, could easily be reduced if such publicly owned enterprises as the airport were efficiently run and earned the expected profit, free from systemic corruption and inefficiency. The Special Representative is accountable for the activities of Pillar IV and even with the prompting of the Office for Coordination of Oversight of Publicly Owned Enterprises, it is for the Special Representative to ensure that reform measures are understood and implemented. Furthermore, the controls placed by UNMIK on Pristina Airport funds do not ensure proper accountability and efficient use of resources. Adequate control and oversight might have prevented, or at least reduced, the misappropriation and diversion of funds and the aberrant procurement practices. Therefore, control must be tightened and regular audits must be conducted in order to reach the goal of proper accountability of the publicly owned enterprises.

43. A considerable number of managers presented the Task Force with the excuse that they were not clear as to whether European Union or United Nations

institutional rules applied in Pillar IV and Kosovo Trust Agency activities and thus have not assumed any responsibility. This lack of clarification contributed to an air of uncertainty regarding the applicability of rules that led to abuses of the monies available to Pristina Airport. This misunderstanding must be removed and the applicability of rules, including those rules related to procurement and finance, must be clarified.

44. The Special Representative has overall and ultimate responsibility for the four pillars and should address corrupt management in the publicly owned enterprises and ensure that a change in the culture regarding accountability occurs within UNMIK and those enterprises. In the report of the Secretary-General to the Security Council, the Special Representative stated that the anti-corruption law needed to be finalized and adopted and an anti-corruption agency established in accordance with European standards (S/2005/335 and Corr.1, annex I, para. 56). As mentioned in paragraph 13 above, the Special Representative concluded that no significant progress had been made on tackling corruption. OIOS agrees with that conclusion and stresses that only strong disciplinary action against persons responsible for misconduct and mismanagement at Pristina Airport will have the desired impact of deterring management in other publicly owned enterprises. Only the creation of a strong role model will convince the public in Kosovo and elsewhere that the transfer of responsibilities to the provisional institutions of self-government is indeed connected to a new emphasis on accountability.

45. If accountability and responsibility are neglected, the prospect of a successful, democratic and prosperous Kosovo will fail. This risk was expressed by the International Crisis Group in its Europe Report No. 163 of 26 May 2005, which stated: "Much of the work being rushed through at present to get a result in the mid-year standards review is of questionable quality, not likely to stand the test of time. Problems that will come back to haunt Kosovo like toleration of widespread corruption and of powerful, unaccountable partisan political intelligence agencies are being swept under the carpet rather than addressed." Although the International Crisis Group reports neither to the General Assembly nor to the Security Council, it is an independent group with a long-standing and excellent reputation in the international community.

46. With UNMIK peacekeeping operations winding down and in the light of the widely held view that the United Nations will withdraw from Kosovo in 2006, the reluctance by senior Mission management to address fraud and corruption will have a devastating impact on public perception inside and outside of Kosovo, as the United Nations will be seen as escaping from the problems rather than solving them.

VII. Recommendations

47. OIOS makes 11 recommendations based on the findings of the investigations, designed to ensure proper accountability for Pristina Airport. The Special Representative has not accepted the recommendations, stating that: "*they flow from OIOS's incorrect and unfounded assertions of a prerogative to direct the [Special Representative of the Secretary-General] with regard to the [Investigations Task Force] reporting, and of a mandate to investigate entities such as the [publicly owned enterprises] in Kosovo*".

- Recommendation 1: It is recommended that UNMIK cooperate with the Kosovo Government as to the creation of a viable, long-term anti-corruption entity responsible for administrative investigations in the public sector (IV03/365/01)

- Recommendation 2: It is recommended that UNMIK monitor the cases referred to the Department of Justice and report to the Department of Peacekeeping Operations and the Task Force on the results of the cases. Furthermore, any cases referred for criminal action that are not the subject of a prosecution action should be addressed via applicable administrative and disciplinary processes (IV03/365/02)

- Recommendation 3: It is recommended that the performance of all managers of Pristina Airport be evaluated in light of the Task Force investigations (IV03/365/03)

- Recommendation 4: It is recommended that adequate resources be made available to conduct regular external audits for each of the publicly owned enterprises to assist in improving systems of control and reducing the opportunities for fraudulent activities (IV03/365/04)

- Recommendation 5: It is recommended that UNMIK introduce procedures for the regular disclosure of assets by publicly owned enterprises staff, such as senior managers and those working in areas of risk, such as public procurement (IV03/365/05)

- Recommendation 6: It is recommended that the Special Representative of the Secretary-General, together with UNMIK Pillar IV, clarify the rules applicable to the publicly owned enterprises and undertake an awareness-raising programme to ensure clarity for all personnel (IV03/365/06)

- Recommendation 7: It is recommended that UNMIK, through Pillar IV, conduct training for all staff in the publicly owned enterprises on adherence to rules, both financial and administrative, relevant to each of the publicly owned enterprises (IV03/365/07)

- Recommendation 8: It is recommended that UNMIK take the actions recommended in the individual Task Force reports in a speedy and effective manner in order to prevent further fraud and corruption risks from materializing to the detriment of Kosovo (IV03/365/08)

- Recommendation 9: It is recommended that UNMIK, in collaboration with the relevant Kosovo authorities, establish and promote the concept of merit-based employment in all public institutions (IV03/365/09)

- Recommendation 10: It is recommended that UNMIK make contact with the air carriers mentioned above in an attempt to determine whether any Pristina Airport officials improperly interfered with the conduct of aviation operations or the scheduling of flights or whether any person with an official function at the airport sought a bribe in connection with legitimate aviation activities at the airport (IV03/365/10)

- Recommendation 11: It is recommended that the Secretary-General share the present report with the Security Council (IV03/365/11)

(*Signed*) Inga-Britt **Ahlenius**
Under-Secretary-General for Internal Oversight Services

Annex

Case list

Criminal

050/04 Alleged misappropriation of airport funds for insurance purposes

192/04 Allegation of fraud in handling of cargo at Pristina Airport

214/04 Allegations of impropriety regarding airport apartments

223/04 Investigation into allegations of bribes for visa applications

260/04 Austrian Air tickets

285/04 Pristina Airport — possible administrative irregularity regarding tender procedures for electronic equipment (referred to Department of Justice for information purposes in conjunction with 286/04)

286/04 Alleged falsification of documents

372/04 Allegations of bribes/kickbacks for employment at Pristina Airport

462/04 Investigation into allegations of bribery and favouritism in procurement of uniforms by Pristina Airport (referred to Department of Justice for information purposes)

Administrative

049/04 Pristina Airport air traffic control services — frequent cash withdrawals

219/04 Irregularities in the provision of a heating, ventilation and air-conditioning system at Pristina Airport

217/04 Radar procurement

221/04 Alleged irregularities with UNMIK bank account No. 1110019243020132-1

261/04 Alleged fraud — Pristina Airport cargo department

262/04 Report of allegations of evasion of Pristina Airport charges

274/04 Irregularities in the procurement and contract award for the new car park at Pristina Airport

275/04 Irregularities in the procurement and contract award for winter and summer uniforms at Pristina Airport

276/04 Alleged irregularities in a contract for the construction of garages and a parking area for air traffic control services at Pristina Airport and in an annex agreement for the supply of new offices, training room and maintenance garage for the rescue firefighting service

277/04 Irregularities in the contract for the supply and mounting of a suspended ceiling in the old part of the passenger terminal

278/04 Pristina Airport — alleged administrative irregularity regarding a flat information display system tender

270/04 Irregularities in a contract for the supply and construction of office containers for air traffic control services and in a single source annex agreement for additional office accommodation, lunch room and showers for the KFOR multinational force at Pristina Airport

281/04 Investigation into allegations of irregularities in two tender processes for the supply of cleaning machines to Pristina Airport

281/04 Irregularities in the addition of a single-source contract one month after the award of a contract for the supply of two new containers and the dismantling, transport and reconstruction of a further seven containers at Pristina Airport

282/04 Irregularities in the procurement for the extension of the cargo apron at Pristina Airport

283/04 Allegations of theft and corruption arising out of the collection of handling and landing fees and de-icing costs for passenger aircraft using Pristina Airport

284/04 Irregularities in the award of contracts for the maintenance and repair of the runway, taxiways and parking areas at Pristina Airport

287/04 Pristina Airport — alleged administrative irregularity regarding an X-ray tender

352/04 Allegations against a Pristina Airport employee for not having disclosed a conviction for human trafficking

Other

215/04 Allegations of sexual exploitation/rape

216/04 Alleged violations of procurement procedures — insurance

218/04 Allegation of possible bribery at Pristina Airport

220/04 Alleged violation of procurement procedures — electrical equipment

222/04 Allegation of violations of procurement procedures regarding the airport management agreement

288/04 Theft of cash in Pristina Airport cafeteria

289/04 Tender for design of the main project for a ring road in Pristina City